

## REMARKS

Claims 1-31 are presently pending in the case. Claims 24 and 28 have been amended. Reconsideration of the present case in view of the remarks herein is requested.

### **Claim rejections under 35 USC 102**

The Examiner rejected claims 1-31 under 35 USC 102(b) as being anticipated by U.S. Patent 6,705,313 to Niccolai (hereinafter Niccolai). The rejection is traversed.

Niccolai does not qualify as art under 35 U.S.C. 102(b). The present application was filed on April 9, 2004 and claims the benefit of a provisional application 60/461,679 which was filed on April 9, 2003. Niccolai was published as a patent on March 16, 2004.

In addition, Niccolai does not anticipate claims 1-31. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1, for example, is to a handheld aerosolization apparatus comprising, inter alia, a housing defining a chamber having a plurality of air inlets, and a shield which covers at least one but not all of the air inlets, whereby the shield prevents blockage of the at least one air inlet by a user grasping the apparatus. Niccolai discloses no such shield that covers an inlet to prevent blockage of at least one air inlet by a user grasping the apparatus. Elements 2 and 21, referred to by the Examiner, do not cover an inlet. Element 2 is the body in which the inlets are formed. Element 21 is a fin that extends from the housing but does not cover an inlet. It is respectfully submitted that this positively recited feature is absent in the teachings of Niccolai, thereby precluding a section 102 rejection because each and every element of the claim is not taught by the cited reference. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

Independent claims 14, 19, 24, and 28 are also not anticipated by Niccolai. Claim 14 recites "a shield which covers a portion of but not all of at least one of the air inlets." Claim 19 recites "a shield extending around only a portion of transverse circumference of the housing, the shield covering at least one air inlets." Claim 24 recites "shielding at least one but not all of the air inlets from being blocked by a user grasping the chamber by covering at least one of the

inlets." Claim 28 recites "shielding only a portion of at least one of the air inlets from being blocked by a user grasping the chamber by covering a portion of at least one of the air inlets." Niccolai does not disclose these features, as discussed above, and therefore does not anticipate claims 14, 19, 24, and 28.

It is respectfully requested that the rejections of claims 1, 14, 19, 24, and 28 based on Niccolai be withdrawn. Claims 2-13, 15-18, 20-23, 25-27, and 29-31 depend from an allowable base claim and are also allowable.

**Conclusion**

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

NEKTAR THERAPEUTICS  
(formerly INHALE THERAPEUTIC  
SYSTEMS)

Dated: 20 MAR 2006

By: 

Guy V. Tucker  
Reg. No. 45,302

Please send all correspondence to:  
Guy Tucker  
Nektar Therapeutics  
(formerly Inhale Therapeutic Systems, Inc.)  
150 Industrial Road  
San Carlos, CA 94070  
Phone: (650) 620-5501  
Fax: (650) 620-6395